



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: MAY 04, 2023

IN THE MATTER OF:

Appeal Board No. 627863

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective July 24, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by LIFE ADJUSTMENT CENTER INC prior to July 24, 2022 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed January 4, 2023 (), the Administrative Law Judge overruled the initial determination.

The employer applied to the Appeal Board, pursuant to Labor Law § 620 (3), for a reopening and reconsideration of the Judge's decision. Due deliberation having been had, the Board has reopened and reconsidered the decision of the Administrative Law Judge.

Our review of the record reveals that the case should be remanded to hold a hearing. Specifically, the claimant contends she was discharged on July 19, 2022 by the director, Vladimir Borsen, for refusing to sign a write-up for being a no-call/no-show on July 18, 2022. The employer contends the claimant was suspended

from July 20 through July 25 without pay pending an investigation and was to return to work on July 26 but she was later discharged for failing to report

to the workplace for a meeting or call in her absence on July 28, 2022. The Board has, therefore, determined to provide the parties another opportunity to submit additional testimony and other evidence on the reason for the claimant's separation from employment. In this regard, the employer should produce Director Vladimir Borsen to testify. Mr. Borsen should be questioned regarding the details of what occurred with the claimant on July 19, 2022. In addition, the employer shall provide complete copies of the relevant warnings, as well as the employer's call-out policy and procedure. The claimant should be questioned regarding her lack of a caregiver from July 18, 2022 through July 28, 2022 and any reason(s) why she was not able to follow the call-out procedure to notify the employer regarding her inability to attend the meeting on July 28, 2022. The claimant shall produce any documentation regarding her lack of a caregiver from July 18, 2022 through July 28, 2022. All documents produced by the parties should be sent to the Hearing Section and to the other party so that they are received by each a minimum of three days prior to the remand hearing. As the employer's human resources director indicated that he had not received the hearing packet for the hearing held on December 20, 2022, that hearing packet shall be sent to both parties by the Hearing Section along with the packet of any new documents that are included in the hearing file.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, upon due notice to all parties and their representatives; and it is further

ORDERED, that the remand hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER

